

**Reserved****Contempt Application (Criminal) No. 5 of 2008**

In Re

1. Shailendra Sharma
2. Nahar Singh Yadav Advocates civil courts Ghaziabad.

Hon. Imtiyaz Murtaza J.Hon. S.S.Tiwari, J.

(Delivered by Hon. Imtiyaz Murtaza J.)

Present contempt proceeding emanates from the Reference made by Sri Himanshu Bhatnagar, the then Chief Judicial Magistrate, Ghaziabad with accompanying letter of the District Judge dated 11.5.2007 studded with the request for initiation of contempt proceeding against the contemnors namely, Shailendra Sharma and Nahar Singh Yadav, Advocates, Civil Courts Ghaziabad.

The abridged version as encapsulated in the Reference made to this court is that the application for surrender bearing no. 176 of 2007 State v. Shiv Kumar, P.S. Modi Nagar had been moved before the Addl. Chief Judicial Magistrate, VIII Ghaziabad which subsequently came up before the Chief Judicial Magistrate on 16.5.2007. The aforesaid application was fixed for 17.5.2009 on which date the contemnors put in appearance and demanded early hearing attended with prayer to summon the case diary. However, the officer in his discretion posted the matter for 21.5.2007 for disposal of the application attended with the order to summon the case diary. However, adjourning the application to 21.5.2007 was not relished by the contemnors. It would further transpire that as soon as the officer retired to his chamber after finishing the court work, the contemnors followed him and entered the chamber indulging in name calling and using vituperative language. To be precise, one of the contemnor namely, Shailendra Sharma caught hold of the hands of the officer while contemnor Nahar Singh Yadav tried to bolt the door of the chambers. Sensing trouble, the Presiding officer rushed back to Dais and sat in the court. In the meanwhile, Senior Administrative officer of the Judgeship was sent for, who came there and took the two lawyers to the chambers of the District Judge. After about 10 to 15 minutes, the two

lawyers again came to the chamber of the officer and indulged in abrasive behavior using disrespectful, impolite and discourteous and un-parliamentary language against the officer. It is precisely stated that on their return again, the precise words used by the contemnor Nahar Singh Yadav against the officer were to the effect: "Tu Mujhe Yahan Nazar Andaz Kar Ke Kam Nahi Kar Payega. Adhivakta Ke Alva Mere Aur Bhi Bahut Se Dhande Hain. Mera Yahan Pata Bhi Nahi Payega. Use Jail Vail Say Koi Dar Nahi Hai Aur Voh To Pahle Kitne Hi Mukdamon Mein Band Ho Chuka Hai." The precise words uttered by contemnor Shailendra Sharma are to the effect: "Use Kisi Awmanana Ki Karvahi Se Koi Dar Nahin Lagta Uske Upar 4 Awmanana Ki Karvahi Chl Chuki Hai Jo Aapse Ban pade Kar Lo." It is further stated that the contemnor Nahar Singh also threatened the officer to kill him.

On 21.5.2007, it would transpire, the matter was put up before the Administrative Judge Ghaziabad who appended the following remarks:

"Approved for action in contempt. Place before Hon. C.J."

Hon. Chief Justice vide order dated 20.2.2008 appended approval to the Reference with the direction to list the Reference before the Appropriate Bench. It is in this conspectus that the matter has come up before the Bench.

Sri Satish Trivedi assisted by Sri V.K.Jaiswal, Manu Yadav and Nitin Gupta appeared for the contemnors and pleaded for merciful view in the matter. On being called upon to argue the case on merit of the case, he referred to apology stating that the contemnor has already tendered the apology and prayed for discharge taking a benign view further urging that that the contemnors were fairly senior having been enrolled as Advocate in the year 1975 in so far as Nahar Singh Yadav is concerned attended with further submission that he can not be said to be addicted to using contemptuous language and making scurrilous attacks nor is there any previous instance of his showing disrespect to the court in so far as contemnor Shailendra Sharma is concerned and whatever has happened in Court was in the spontaneity. Ultimately, he stated that the contemnors should be given a chance to expiate their deviant behaviour if it be so.

We are anguished that we have to deal with a case involving lawyers

under the Contempt of Court Act. We however indicate to ourselves the piece of advice that the Court while dealing with contempt matter should not be over or hypersensitive and should not exercise this jurisdiction on any exaggerated notion of the dignity of the Judges and must act taking a dispassionate view of the entire matter. It is the settled principles that the rule of contempt is not to be lightly invoked and is not to be used as a cloak to cow down somebody into submission on the basis of fancied claim. It is intended to offer protection to the court itself or to a party in judicial proceeding whose interest may be affected or the authority of the court is lowered and the confidence of the people in the administration of justice is weakened. At the same time, it should be borne in mind that the Court is the protector of public justice and it has a stake in the dignity and protection of those who man the court.

In the counter affidavit filed by the contemnor Shailendra Sharma sworn on 23rd August 2008, the contemnor in Para 3 has begun with the statement that he has had the highest respect for the court and never acted in a manner which even remotely identified him with a contempt of court fringed with submission that without going into the merits of the allegations, he tenders his unconditional apology for his unintentional act which the Court views as contempt of the Court. In Para 4, the contemnor craved leave to bring on record the actual facts and events which according to him are demonstrative of his complete innocence and unmask the falsehood of the allegation so labelled against him. In Para 5, he has set out the sequence of events attended with averment that Himanshu Bhatnagar has levelled false allegations against him and Nahar Singh Yadav. In Para 7, he has denied the allegations imputed to him attended with averments that on 4.4.2007 surrender application was moved by Pradeep Tyagi Advocate on behalf of Shiv Kumar before Addl. Chief Judicial Magistrate VIII Ghaziabad and the report was called for from the concerned police station the same day. In Para 8, it is averred that the report was submitted by the police on 5.4.2007 that Shiv Kumar was wanted in case crime no. 214 of 2007. In Para 9, it is averred that the offences in which aforesaid Shiv Kumar was wanted, was bailable offence but no orders were passed by the learned Magistrate on that date. In Para 10, it is averred that on 6.4.2007, the learned A.C.J.M called for fresh report from the police station and fixed 9.4.2007. The police submitted its report on 9.4.2007 in which aforesaid Shiv Kumar was also shown to be wanted in section 420 IPC. The application was rejected on

9.4.2007. In Para 11, it is averred that aforesaid Shiv Kumar filed application for surrender on 16.5.2007 before the Addl. Chief Judicial Magistrate VIII Ghaziabad. The application was transferred before the Chief Judicial Magistrate Ghaziabad fixing 17.5.2007. The Chief Judicial Magistrate posted the matter for 21.5.2007. In Para 12, it is stated that Shiv Kumar surrendered before the C.J.M on 22.5.2007 followed by application for bail before the learned Special Judicial Magistrate (C.B.I.). The bail application was however rejected vide order dated 22.5.2007 passed by learned Special Judicial Magistrate (C.B.I.). In Para 14, he denied the allegations that he exerted pressure on the C.J.M on 17.5.2007 for fixing early date as there was no occasion for him on account of the fact that 19.5.2007 was closed due to local strike and 20.5.2007 was Sunday. He also denied that there was any incident on 17.5.2007 as he immediately returned to his chamber. The averments made in Para 15 appear to be argumentative in that it is suggested that if any incident as alleged had happened on 17.5.2007, the presiding officer should have noted the same on the application dated 16.5.2007 itself which could only be forwarded to the District Judge for recommendation for initiation of contempt proceeding. In Para 16, it is stated that no such order or complaint was noted on the surrender application dated 16.5.2007 further suggesting that in fact no such incident had taken place. It is also stated that he sought queries in the form of question and answer but he was refused the certified copy of surrender application and orders passed thereon. In Para 17, it is stated that on 7.7.2008, the contemnor filed an application seeking documents regarding surrender application and orders passed thereon. The contemnor it is further averred made queries from the office regarding surrender of Shiv Kumar on 22.5.2007 and orders passed on the bail application but the office reported back that bail application dated 22.5.2007 and surrender application dated 16.5.2007 were not available on record. In Para 18, it is averred that on 22.7.2008, again question answer was applied in respect of surrender application no. 176 of 2007 dated 16.5.2007 and order passed by learned Magistrate dated 17.5.2007 but the office reported back that the application in question was not available on record. In Para 19, it is averred that the certified copies as demanded by him were refused by the office with a purpose to a design. It is suggested that no noting was scribed on the application No. 176 of 2007 on 17.5.2007 as regards the incident and therefore, it was inferable that no such incident took place. In Para 20, it is averred that the contemnor has been falsely nominated in the contempt

petition. The contemnor made the imputation that his nomination in the contempt proceeding was a sequel to the fact that the contemnor as a senior Advocate of the Ghaziabad had headed a delegation which met Hon. Chief Justice on 13.5.2008 for taking action against Himanshu Bhatnagar attended with prayer to transfer him from Ghaziabad. In Para 21, it is averred that as a consequence of meeting of delegation which comprised him and Nahar Singh Yadav and other Advocates, the Chief Justice passed orders for making enquiry by Special Vigilance officer High Court Allahabad. In Para 22, the averments relate to his ailment and treatment. In Para 23, he reiterated that he had every respect for the court and the judicial officers and he had not indulged in any act as alleged in the complaint. He also stated that he has been practising for the last 28 years and has also served as elected secretary of the Bar Association. In Para 24 he averred that the complaint was made by the officer against him and Nahar Singh Yadav with the avowed object of saving his skin and also to crank up pressure upon the contemnors. In Para 25, he has referred to letter of the District Judge dated 11.5.2007 enclosing therewith the complaint of Himanshu Singh C.J.M dated 17.5.2007 attended with submission that if the incident had occurred on 17.5.2007 how could Distt Judge forward the complaint by means of letter dated 11.5.2007. In Para 26, it is averred that the complaint has been made against him and Nahar Singh Yadav with a view to putting pressure upon him and Nahar Singh Yadav to withdraw/not press the complaint made to Hon. Chief Justice. In Para 27, it is averred that the contemnor has not indulged in any act as alleged but if the Hon. Court comes to the conclusion that the answering respondent had committed contempt of court, the deponent renders his unconditional apology. He also prayed for dismissing the contempt petition and discharging the notices issued against the answering respondent.

Now we advert to the contents of the counter affidavit sworn and filed by Nahar Singh Yadav contemnor. In Para 2, it is averred that the deponent was elected as president Bar Association Ghaziabad in the year 2007. In Para 3, it is averred that Himanshu Bhatnagar who was posted as Chief Judicial Magistrate made a frivolous complaint dated 17.5.2007 levelling various allegations against him and Shailendra Sharma Advocate and thereafter, he reiterated those facts which are already mentioned leading to initiation of contempt against him and shailendra Sharma. In Para 4, he has denied the allegations contained in the complaint attended with the averments that he was not engaged as counsel in the case of Sheo Kumar and that he had

received certain complaints both from advocates and litigant public against Himanshu Bhatnagar, C.J.M and being President of Ghaziabad Bar Association he advised the officer to improve his working. It is also averred that he also made complaint in writing to the District Judge for taking action against the officer and other officials who were indulging in corrupt practices. In Para 5 it is averred that pursuant to his complaint, the District Judge issued a general order directing all the officials working in the Judgeship to work properly. In Para 6, it is averred that he also made a complaint dated 30.1.2007 against the referring officer. In Para 7, it is averred that he made several other complaints against the officer addressed to Hon. Chief Justice. In Para 8 it is averred that the office bearers of the Bar Association met the Chief Justice apprising him of the corrupt practices being indulged in by the officer attended with prayer for taking action against him and in the meantime, for transferring him from Ghaziabad. In Para 9, it is averred that pursuant to the meeting, Hon. Chief Justice passed order for vigilance enquiry against the officer. It is further averred that in the preliminary enquiry, allegations were found to be loaded with substance and consequently, the officer was transferred from Ghaziabad to Mathura. In Para 10, the contemnor referred to the incident of G.P.F scam in which F.I.R was lodged against Ashutosh Asthana Central Nazir. In Para 11, it is averred that in his statement Ashutosh Asthana levelled allegations against Himanshu Bhatnagar stating that he acted on direction of the officer in arranging for fooding, lodging etc. In Para 12, it is averred that the deponent never indulged in any activity of extending threats to any of the judicial officers. In Para 13, it is averred that the deponent also filed PIL in this Court for the relief of taking action against Himanshu Bhatnagar and the said PIL is pending in the Court. In Para 14, it is averred that the frivolous allegations have been made against him and Shailendra Sharma by the officer in order to save his skin and that no such incident ever took place as alleged in the complaint. In Para 15, he referred to letter of District Judge dated 11.5.2007 whereby he forwarded the complaint of Himanshu Bhatnagar dated 17.5.2007. In Para 16, it is averred that Sri R.S.Chaubey the then District Judge Ghaziabad was in connivance with Sri Himanshu Bhatnagar and therefore, he forwarded the complaint to the Hon. High Court for initiation of contempt proceeding. In Para 18, he prayed for dismissing the contempt petition attended with prayer for taking legal action against Himanshu Bhatnagar.

The referring officer namely Hiamanshu Bhatnagar also filed rejoinder affidavit in reply to counter affidavits discussed above. In Para 2 he averred that Sri Ashok Kumar Yadav, A.C.J.M VIII who was earlier seized of the surrender application, wrote a letter dated 16.5.2007 stating that due to certain reasons he did not want to dispose of the above noted application for surrender. In Para 3 of the affidavit it is averred that on 17.5.2007, request was made across the bar that case diary be summoned at the time of disposal of surrender application and in consequence, 21.5.2007 was fixed. After finishing work, when he retired to chamber, the contemnors entered his chamber and expressed displeasure and annoyance for fixing surrender application for 21.5.2007. He tried to explain the circumstances but the contemnors misbehaved with him and reiterated the facts which were mentioned in the complaint. In Para 4 of the affidavit, it is averred that Nahar Singh Yadav although was not the counsel of applicant Shiv Kumar, he came to the court accompanying Shailendra Sharma with the avowed object of exerting pressure and influencing judicial work. In Para 4 (A), it is averred that Nahar Singh Yadav contemnor was involved in the incident which had taken place on 5.8.1991 in which he flung chair at Sri A.K.Srivastava, the then District Judge Ghaziabad who was later-on elevated as Judge High Court Allahabad. The incident it is further reported was reported to the High Court by means of letter dated 5.8.1991. The letter is annexed to the affidavit as Annexure R.A.3. It is further averred that at that time, protesting the incident of attack on District Judge, the judicial officers posted at Ghaziabad abstained from judicial work. It is further averred that as a sequel to the incident, Nahar Singh Yadav was arrested and detained under N.S.A besides being suspended from membership of the bar.. The copy of the resolution of the Bar has been annexed as Annexure R.A.5. In Para 4 (B), the officer has related another incident pertaining to court of Addl. Civil Judge (S.D.)/Addl. Chief Judicial Magistrate Court no.2 Ghaziabad in which Nahar Singh Yadav was involved. The facts of the incidents are contained in Annexure R.A. 6 according to which on 6.7.2007, while the court was transacting judicial business in the court, Nahar Singh Yadav came and interrupting proceeding of the court, spoke to the presiding officer that he was the president of the Bar Association and he has to talk to him in connection with bail matters. When the Presiding officer declined to meet him in judicial matters, he became agitated and created noisy scene in the court and thereafter departed threatening to see the presiding officer. In Para 9, he has denied that any vigilance enquiry was ordered or instituted against

him by the High Court. He also denied that any departmental enquiry was instituted or was pending against him. He has also referred to public interest litigation in the shape of Writ petition no. 30574 of 2008 filed by Nahar Singh Yadav in which Registrar General, Vigilance officer and the deponent (Himanshu Bhatnagar) were impleaded. It is further averred that the aforesaid writ petition was dismissed by the High Court by means of order dated 18.8.2008 as withdrawn. The aforesaid petition, it would appear, was opposed tooth and nail by the counsel appearing for the High Court that it was instituted as a counter measure to the criminal contempt initiated against the contemnor Nahar Singh Yadav. The order of the Court is annexed as Annexure R.A. 7.

The contemnor Nahar Singh Yadav again filed a supplementary affidavit sworn on 6th Jan. 2010. In Para 2 of the affidavit, it is averred that he was elected as President Bar Association Ghaziabad in the year 2007 and as a President he was duty bound to look after the interest and welfare of litigants and members of the Bar Association and if any of the judicial officers indulged in corrupt practices, it was incumbent upon him to inform the Distt Judge as well as other higher officials of the Judicial of the State as well as country. In Para 3, it is averred that he came to know about the corrupt practices indulged in by Hiamsu Bhatnagar and he made several complaints against him to the Distt Judge and also to the Hon. Chief Justice for taking action against him and also prayed for setting enquiry against him. In Para 4 it is averred that in order to crank up pressure on him, the officer made the complaint to the Distt Judge for initiation of contempt proceeding against him and Shailendra Kumar Sharma. In Para 5, it is averred that th aforesaid Himanshu Bhatnagar not only made complaint for initiation of contempt proceeding but also referred the matter to Chairman Bar Council U.P. Allahabad for rescinding the license of the deponent. In Para 6, it is averred that pursuant to the complaint, disciplinary proceeding no. 82 of 2008 was commenced and upon notices being served, the deponent filed objection. In Para 7, it is averred that the bar Council in ultimate analysis dismissed the complaint by a detailed order dated 21.6.2009. In Para 8 it is averred that in the disciplinary proceeding, the members of the committee were of the view that the complaint had no basis but was sequel to personal grudge of the officer. In Para 9, it is averred that he was not the counsel in the case in which complaint was made against him and that the complaint was made by the officer in order to exert pressure for withdrawing complaints made

against his corrupt practices. In Para 10, he prayed for dropping the contempt proceeding.

We have gone through the various papers including the counter affidavits sworn and filed by contemnors, the rejoinder affidavit filed by Himanshu Bhatnagar, the then Chief Judicial Magistrate Ghaziabad and also the supplementary affidavit filed by Nahar Singh Yadav sworn in Jan 2010. It would clearly transpire from a scrutiny of the various papers and affidavits that it is not denied as would be clear from the affidavit filed by contemnor Shailendra Sharma that application for surrender on behalf of applicant Shiv Kumar came up before Sri Himanshu Bhatnagar on 17.5.2007 and it is also not denied that request was made to summon the case diary but the court while summoning the case diary had fixed 21.5.2007 which according to the allegations contained in the referring order, was not relished by the contemnors. It is also not denied as would be clear from the affidavit of Nahar Singh Yadav, contemnor that he had gone to the court on 17.5.2007 although he has stated that various complaints were pouring in against Himanshu Bhatnagar C.J.M of his indulging in corrupt practices and as president of the Bar Association, he had gone to the court of C.J.M in the case in which contemnor Shailendra Sharma was the counsel. It is also not denied that he went to the court and asked the officer to improve his working and he thereafter also made a complaint to the Distt Judge and still thereafter a delegation was taken to Allahabad High Court where the delegation met the Chief Justice and apprised him of the corrupt practices being indulged in by the officer. It is also not denied that the contemnor filed Public Interest Litigation. However, he claimed that the aforesaid PIL was still pending although from the rejoinder affidavit, it leaves no manner of doubt that the said P.I.L had already been dismissed as withdrawn vide Anneuxre R.A. 7 to the rejoinder affidavit filed by Himanshu Bhatnagar. Nahar Singh Yadav and Shailendra Sharma, contemnors in their respective affidavits emphasised the fact that pursuant to meeting of delegation with the Hon. Chief Justice, vigilance enquiry was set up by the Hon. Chief Justice while in the rejoinder affidavit filed by Himanshu Bhatnagar, it is clearly stated that neither any vigilance enquiry nor any department enquiry was ever ordered or was pending against him. The oft repeated averments in the affidavit filed by contemnor Nahar Singh Yadav and Shailendra Sharma are that since they had made various complaints and pursuant to which vigilance enquiry into the corrupt practices being indulged in by the officer had been ordered, the

officer made the complaint pursuant to which contempt proceedings commenced against him, in order to exert pressure on them to withdraw the complaints. As stated supra, no such enquiry was either instituted or pending nor anything was brought on record to prop up the averments that any such enquiry was ordered by the High Court to look into the corrupt practices of the officer, it does not appear believable that the officer made the complaint to counter-act the effect of the complaints made against him by the contemnors. The contemnors have denied the incident in no delphic terms in the manner as narrated in the complaint made by the officer but as stated supra, it is not denied that the contemnors on the day on which incident is alleged to have taken place, had gone to the court but denied to have uttered the words attributed to them. As referred to above, contemnor Nahar Singh Yadav conceded that he had gone to the court and asked the officer to improve his working. The contemnor Nahar Singh Yadav, has also conceded to the fact that as a President of the Bar Association, it was his bounden duty to watch the interest of the litigant and the members of the bar. Quintessentially speaking, he admitted to have acted as a vigilante in the interest of the litigant public and the members of the Bar. He has also confessed to have made various complaints to the District Judge and also to the High Court against the officer. It admits of no doubt that as a President of the Bar, it was his bounden duty to have discussed the working of various courts and to bring to the notice of the District Judge about the working style and reputation of various judicial officers of the Judgeship but it appears to us from the facts on record that the contemnor Nahar Singh Yadav has exceeded the bounds of his duties as a president in interfering with the working of courts inasmuch as by entering the court which was in the midst of hearing of case and by asking the presiding officer to improve his working.

Before we proceed further, we would like to draw attention to the various circulars including C.L. No. 83/ve-58 dated 28th Oct 1980 and C.L. No. 85/Ve-58 Admn. (G) dated 26th Dec 1981. The relevant portion of the said circular is excerpted below.

“Monthly meeting of all the Presiding Officers of Civil and Criminal Courts.- Once in two or three months the President and the Secretary of the District Bar Association should also be invited to the monthly meeting of the Presiding officers for discussing matters touching the Bench

and the Bar.”

By referring the circular aforesaid, we intend to say that if any members of the Bar has any grievance, he could have the matter discussed in the monthly meeting through the Secretary and President of the Bar. Even if it be admitted that the contemnor Nahar Singh Yadav was concerned with the rampant corrupt practices being indulged in by the various officers including the referring officer and it is on record that he brought the matter to the notice of the District Judge and also met the Chief Justice with a delegation, it was not open for him to have gone to the court and to have interrupted the judicial work and further to have asked the judicial officer in the open court to improve his working. This conduct of the contemnor , it leaves no manner of doubt, was an act which amounted to interference with the due course of administration of justice and also an act undermining the dignity of court amounting to criminal contempt under section 2 (C) of the Contempt of Court Act, 1971.

The next aspect to be considered is whether the contemnors uttered the words as alleged in the complaint. In this connection, the words uttered by the contemnors are being reproduced below. The contemnor Shailendra Sharma is alleged to have caught hold of the hands of Sri Himanshu Bhatnagar C.J.M while contemnor Nahar Singh Yadav is alleged to have tried to bolt the door of the chamber. The contemnor Nahar Singh Yadav is attributed to have uttered following words before the officer, as would appear, could rush back to Dais of the court.

“Tu Mujhe Yahan Nazar Andaz Kar Ke Kam Nahi Kar Payega. Adhivakta Ke Alva Mere Aur Bhi Bahut Se Dhande Hain. Mera Yahan Pata Bhi Nahi Payega. Use Jail Vail Say Koi Dar Nahi Hai Aur Voh To Pahle Kitne Hi Mukdamon Mein Band Ho Chuka Hai.”

The contemnor Shailendra Sharma is attributed to have uttered the following words.

“Use Kisi Awmanana Ki Karvahi Se Koi Dar Nahin Lagta Uske Upar 4 Awmanana Ki Karvahi Chl Chuki Hai Jo Aapse Ban pade Kar Lo.”

Although both the contemnors have denied to have uttered the words as ascribed to them and instead took shelter behind the plea that since they had made complaints citing instances of corrupt practices of the officer, he was annoyed and prejudiced and hit them at the first instance inventing a theme which was nothing but a fabric with all false thread. In connection with this submission, we will have to flash back to recount the sequence of events. The dispute emanated on fixing surrender application on a later date and it brooks no dispute that the contemnor Shailendra Sharma wanted early date demanding at the same-time summoning of case diary. Partly acceding to the request the officer ordered summoning of the case diary but fixed 21.5.2007. This order it would appear was not relished. It is on record that after the officer had retired to Chambers, the contemnors followed him in the chamber and tried to bolt the door and one of the contemnor namely Shailendra Sharma caught hold of the hands of the officer preventing him from leaving the chamber but sensing trouble for himself, he immediately rushed to Dais. In the meantime, Senior Administrative officer upon being called, came to the rescue of the officer who took away the contemnors from the court to the chambers of the District Judge. It is also on record that again the contemnors came back to the chambers and displaying abrasive behaviour, used un-parliamentary language against the officer which are excerpted above. While forwarding the complaint of the officer to this Court, the District Judge has not disputed the sequence of events as narrated in the complaint. Even if it be assumed that the officer was prejudiced against the contemnors, the contemnors have not levelled any allegation against the District Judge being prejudiced to them. At this stage, it may also be recalled that it is settled position by a catena of decisions that the version of the presiding officer in such cases is entitled to pre-eminence. In the facts and circumstances, we have no reason to discredit the version of the officer as contained in the complaint which was duly forwarded by the District Judge to this Court and rather, we have no hesitation to hold that the theme set up by the contemnors is not believable. In the conspectus of the above facts and also considering the facts on record and regard being had to the over all circumstances of the case, we are of the considered view that there is nothing on record to prop up the contentions that the contemnors did not utter those words while trying to encircle him in the chambers or the incident did not occur in the manner as enumerated by the officer in his complaint.

It is stated at various places in his affidavit by the contemnor that he

as a President of the Bar Association had a duty to the litigant public and also to the members of the Bar to act against the deviant behaviour of the judicial officers who were indulging in corrupt practices. The contemnors are lawyers governed by Advocate Act and trained in law. A lawyer has certain duties towards the court bearing in mind the dignity and prestige of the court. The sequence of events given by the contemnor itself raises a natural inference that at the time of incident, the contemnor must have interrupted the proceedings of the court and uttered words as complained of in the Reference. The contempt becomes graver when the contemnor is an Advocate- well trained in law and acquainted with the niceties and intricacies of legal proceeding and the aura and majesty of law court. Excepting the counter affidavits, there is nothing on record having complexion of an apology tendered by the contemnors. The apology tendered is a conditional one and does not indicate their real contriteness. It is at this belated stage that they expressed oral apology through their counsel though they were present. From the counter affidavit, it leaves no manner of doubt that the contemnors made all out efforts to put the blame on the officers and did not seem to be repentant for their acts which scandalized the court and undermined the dignity in the public estimation. The contemnor Nahar Singh Yadav, was the elected President of the Bar Association at the relevant time. Being President of the Bar does not confer upon him any unbridled power to act as a vigilante. We have referred to circular supra in which it is clearly postulated that the District Judge shall invite President and Secretary of the Bar to discuss the working of various courts in the Judgeship. In case the contemnors had any proof against any of the judicial officers indulging in corrupt practices, instead of acting as a vigilante as they have done in the instant case, they should have approached the District Judge. It is clearly stated that they also made complaint to the District Judge. In case they had made any complaint to the District Judge, they should have waited for the result. Any deviant behaviour of a judicial officer has to be dealt with on administrative side. Whenever any complaint is received against any of the judicial officers, the District Judge looks into the allegations and if he finds any substance therein, he sends his report to the High Court on administrative side. Again if there is any substance in the report of the District Judge the matter is referred to Administrative Committee for disciplinary enquiry or for vigilance enquiry as the case may be. It cannot be denied that stern action is taken if any of the judicial officers is found to be guilty of deviant behaviour or aberration on the basis of the complaint. The

District Judge is the head of district judiciary and he acts as a watch-dog qua the judicial officers posted there. It is his duty to take steps to eliminate corruption in the Judgeship. In case the District Judge is found wanting in his duties, he is also dealt with sternly. Be that as it may, the contemnor Nahar Singh Yadav and Shailendra Sharma have clearly stated in their respective affidavits that besides the complaint made to the District Judge against the officer, they also met the Hon. Chief Justice alongwith delegation and pursuant to their complaint, vigilance enquiry was instituted. The officer in his rejoinder affidavit has denied the allegations stating that at no stage, any vigilance or disciplinary enquiry was instituted against him nor any such enquiry was pending anywhere against him. In this view of the matter, there appears to be no ring of truth in the contentions/averments of the contemnors. The contemnors, we are of the considered view, exceeded the bounds and acted in a manner which was clearly an interference with the working of the court besides impairing the dignity and majesty of the court.

Before we proceed further, we would like to quip here that if the judiciary has to perform its function in a fair and free manner, the dignity and authority of the court has to be respected by all concerned failing which the very constitutional scheme and public faith in the judiciary would run the risk of being eroded. Since the contemnor is an Advocate, the matter requires to be considered with a little more seriousness. An Advocate, we feel called to say, is not exempt from ordinary disability which the law imposes and his position is not inviolable and his privileges cannot extend to interfere with the administration of justice. On the other hand he is expected to help in sub-serving the course of justice and not impede it in any manner. A legal practitioner has no doubt his duties towards his client but at the same time he has equally important duty and obligation upon him to cooperate with the court in the orderly and pure administration of justice. Any departure would be construed to be violative and neglecting his duties and obligations. A lawyer is a person educated and trained in law. The use of language has to be balanced and in fitness of things within the framework of the law of the land. He cannot and should not be reckless in the use of language. There are barriers which must be known to a lawyer and it should not be crossed. He should not overstep the limits of decency and ethics in the matter of his behavior towards the court.

SCC 406, the Apex Court held as under.

“ The definition of criminal contempt is wide enough to include any act by a person which would tend to interfere with the administration of justice or which would lower the authority of court. The public have a vital stake in effective and orderly administration of justice . The Court has the duty of protecting the interest of the community in the due administration of justice and so, it is entrusted with the power to commit for contempt of court, not to protect the dignity of the Court against insult or injury, but to protect and vindicate the right of the public so that the administration of justice is not perverted, prejudiced, obstructed or interfered with.”

In *N.B.Sanghvi v. High Court of Punjab and Haryana* (1991) 3 SCC 600 the Apex Court observed as under:

“The tendency of maligning the reputation of Judicial Officers by disgruntled elements who fail to secure the desired order is ever on the increase and it is high time it is nipped in the bud. And, when a member of the profession resorts to such cheap gimmicks with a view to browbeating the Judge into submission, it is all the more painful. When there is a deliberate attempt to scandalize which would shake the confidence of the litigating public in the system, the damage caused is not only to the reputation of the concerned judge but also to the fair name of the judiciary. Veiled threats, abrasive behaviour, use of disrespectful language and at times blatant condemnatory attacks like the present one are often designedly employed with a view to taming a Judge into submission to secure a desired order. Such cases raise larger issues touching the independence of not only the concerned Judge but the entire institution. The foundation of our system which is based on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are made against the Presiding Judicial Officers with impunity. It is high time that we realize that the much cherished judicial independence has to be protected not only from the executive or the legislature but also from those who are an integral part of the system. An independent judiciary is of vital importance to any free society. Judicial independence was not achieved overnight. Since we have inherited this concept from the British, it would not be out of place to mention the struggle strong-willed judges like Sir Edward Coke, Chief Justice of the Common Pleas, and many others had to put up with the Crown as well as the Parliament at considerable personal risk. And when a member of the profession like the appellant who should know better so lightly trifles with the much endeared concept of judicial independence to secure

small gains it only betrays a lack of respect for the martyrs of judicial independence and for the institution itself. Their sacrifice would go waste if we are not jealous to protect the fair name of the judiciary from unwarranted attacks on its independence.”

The foundation of judicial system which is founded on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are made against the Presiding judicial officers with impunity, the much cherished judicial independence which is of vital significance to any free society has to be protected not only from the executive or the legislature but also from those who are an integral part of the system. The tendency of browbeating the judicial officers into submission is on the increase and when there is deliberate attempt to scandalize, it not only shakes the confidence of the litigating public in the system but causes damages to the reputation of the presiding judge and brings disgrace to the fair name of the judiciary.

A Judge or Magistrate has a duty to discharge his judicial functions and he passes order in the manner as he likes fit to the best of his capability in the facts and circumstances of the case. The courts cannot be intimidated to seek favourable orders or to make the court run on his dictate. In the present case, the conduct of the contemnor amounts to intimidating the court and lowering the authority and it clearly amounts to interference with due course of judicial proceedings which were being conducted by the Presiding officer. The power of the High Court of superintendence and control over the subordinate judiciary under Article 235 of the Constitution includes within its ambit the duty protect members of the subordinate courts. In the above conspectus, the charge related to criminal contempt framed against the contemnor is fully established.

In the above conspectus, we have no hesitation to say that the charges of criminal contempt established against a practising lawyer cannot be taken lightly who carries the trapping of an officer of the Court whose duty is to assist the Court and uphold the majesty of law and dignity of the person manning the court. No judicial system can tolerate such ignoble act and conduct of a practising Advocate. The crucial question that remains is what would be the appropriate punishment to the contemnor.

Now we come to deal with the apology whether it commends itself to

be accepted or not. Before we proceed further, we would also not flinch from saying that the apology is not to be used as a weapon of defence forged always to be used as a shield to protect the contemnor as a last resort. It is intended to be evidence of real contriteness. The apology, in order to dilute the gravity of the offence, it has repeatedly been ruled in catena of decisions, should be voluntary, unconditional and indicative of remorse and real contrition and it should be tendered at the earliest opportunity. We have to administer caution to ourselves that we should not be inveigled into accepting apology from those who are addicted to using contemptuous language and making scurrilous attacks and have to their discredit, earlier instance of misfeasance.

The decision of the Apex Court in **Preetam Pal v. High Court M.P. 1993 (1) SCC 529** being relevant on the point under discussion is excerpted as under:

“To punish an advocate for contempt of court, no doubt must be regarded as an extreme measure, but to preserve the proceedings of the courts from being deflected or interfered with, and to keep the streams of justice pure, serene and undefiled, it becomes the duty of the court though painful to punish the contemnor in order to preserve its dignity. No one can claim immunity from the operation of the law of contempt if his act or conduct in relation to court or court proceedings interferes with is calculated to obstruct the due course of justice.”

Reverting to the case in hand, we are of the firm opinion that the apology tendered by the contemnors does not exude bona fide or manifest genuineness ostensibly for the reasons that the apology has been tendered at a stage when the contemnor sensed that their goose was cooked. Besides, the apology is a conditional one. As stated supra, the contemnors set out their own version referring to various acts of omission and commission by the presiding officer and lastly stated that the officer has made reference actuated by malice against them. It does indicate their tenacious attitude. It is borne out from the record that the officer after being manhandled by the contemnors, rushed to Dais and sent for Senior Administrative Officer. The Senior Administrative Officer, it would appear from the letter of the District Judge, apprised the District Judge who immediately sent the Senior Administrative Officer to summon the delinquent Advocates. The advocates it is further reported, were brought to the chamber of District Judge where it is

further reported, the District Judge persuaded them not to indulge in any indecent behaviour to the officer at the same time, assuring the Advocates that he would look into the matter and asked them to return to their seats. It is further reported that instead of going back to their seats, the contemnors again reached the chamber of the Presiding officer and indulged in acts of contempt uttering words as quoted above which were not only disrespectful but manifested their aggressive behaviour. By their conduct, the contemnors created obstacle in the functioning of the court and therefore, it leaves no manner of doubt in our mind that the conduct of the contemnors interfered with due course of administration of justice, undermining the dignity of court. It is in this conspectus, we feel compelled to say that the apology submitted by the contemnors does not seem to inspire a real contriteness on their part but we have no hesitation to say that it has been used as a useful tick to lean on by the contemnors to screen themselves from the rigours of law. The Apex in the aforesaid judgment in *M.S.Singhvi* has rightly observed that the incidence of contempt is ever on the increase. There is a felt need to curb such incidence. To cap it all, the majesty and dignity of the court has to be preserved. It should not be forgotten that frequent attacks on the dignity of the courts would shake the very foundation of the judiciary. The courts have to perform judicial functions in responsible yet disagreeable ambiance and they require utmost protection. The attack made on presiding officers disparaging in character and derogatory to their dignity would vitally shake the confidence of the public in efficacy of the courts. The vitriolic attacks made on the officer were much more than mere insult and in effect they scandalized the court in such a way as to create distrust in the popular mind and impair confidence of the people in court. The administration of justice must remain independent, clean, fearless and impartial. If an Advocate uses the vile of browbeating the Presiding officer by his toxic vitriolic attack, it is indeed disquieting and should not be viewed with equanimity.

In **L.D. Jaikwal v. State of U.P., [1984] 3 SCC 405**, the Apex Court described the apology as a 'paper apology and r refused to accept it in the following words:

"We do not think that merely because the appellant has tendered his apology we should set aside the sentence and allow him to go unpunished. Otherwise, all that a person wanting to intimidate a Judge by making the grossest imputations against him has to do, is to go ahead and scandalize him, and later on tender a formal

empty apology which costs him practically nothing. If such an apology were to be accepted, as a rule, and not as an exception, we would in fact be virtually issuing a 'license' to scandalize courts and commit contempt of court with impunity. It will be rather difficult to persuade members of the Bar, who care for their self-respect, to join the judiciary if they are expected to pay such a price for it. And no sitting Judge will feel free to decide any matter as per the dictates of his conscience on account of the fear of being scandalized and persecuted by an Advocate who does not mind making reckless allegations if the Judge goes against his wishes. If this situation were to be countenanced, advocates who can cow down the Judges, and make them fall in line with their wishes, by threats of character assassination and persecution, will be preferred by the litigants to the advocates who are mindful of professional ethics and believe in maintaining the decorum of Courts."

In the above perspective, it cannot be ruled out that the contemnors set up the entire theory in order to save their skin. In this view of the matter, the apology offered does not commend to us for acceptance and it is turned down.

Before bidding adieu, we would like to refer to certain facts which relate to past conduct of contemnor Nahar Singh Yadav. In the rejoinder affidavit filed by Sri Himanshu Bhatnagar, it is clearly stated that the contemnor was involved in the incident which had taken place on 5.8.1991 in which he flung chair at Sri A.K.Srivastava, the then District Judge Ghaziabad who was later on elevated as Judge, High Court Allahabad. The incident, it is further averred, was referred to the High Court by means of Reference. It is further averred that as a sequel to the incident, the contemnor Nahar Singh Yadav was arrested and detained under National Security Act besides being suspended from membership of the Bar. It is further averred that after the incident which occurred with the C.J.M on 17.5.2007, the contemnor repeated his intemperate performance in the court of Addl. Civil Judge (S.D.) Ghaziabad on 6.7.2007 and again the reference was made to this Court. We have also examined the supplementary counter affidavit sworn on 6th Jan 2010 i.e. much after the rejoinder affidavit of Sri Himanshu Bhatnagar and it is clear that the contemnor Nahar Singh Yadav has not refuted the facts mentioned in para 4 of the rejoinder affidavit.

Both the contemnors have laid much emphasis on the date mentioned in the letter of District Judge forwarding the complaint. Although the emphasis is of insubstantial nature, still we have scrutinized the letter in order to ascertain the true position. It is stated that the D.O. Letter bears date 11.5.2007 while the incident is stated to have taken place on 17.5.2007. From a close scrutiny of the letter of the District Judge, it clearly transpires that the District Judge while signing the letter has also mentioned the date as 17.5.2007 and it appears that on account of some inadvertence, the date 11.5.2007 as mentioned at the top in the letter.

The next argument advanced relates to finding recorded by the Disciplinary Committee of the U.P. Bar Council. Suffice it to say that the findings recorded by the Disciplinary Committee are not binding.

As a result of foregoing discussion, the reference made to this Court is allowed and the contemnors namely Shailendra Sharma and Nahar Singh Yadav Advocates are held guilty of criminal contempt.

We accordingly convict them under section 2 (c) of the Contempt of Courts Act and sentence each of them to undergo simple imprisonment for six months and to pay a fine of Rs. 20,000/-each with default stipulation for one month simple imprisonment. However, the punishment so imposed shall be kept in abeyance for a period of sixty days so as to enable the contemnor to approach the Apex Court if so advised. It needs hardly be said that immediately after expiry of sixty days in case no stay order is furnished by the contemnors, they would be taken into custody forthwith to serve out the sentence immediately.

The matter shall be listed before this Court in the third week of May 2010 for ensuring compliance.

MH

Feb 16,2010